REMARKS

Claims 90, 92-115 and 144-147 are all the claims pending in the application. By this Amendment, Applicant amends claims 90, 95, 100, 102, and 108 to further clarify the features set forth therein. Applicant also cancels claims 94, 99, 104, and 112 without prejudice or disclaimer.

I. Summary of the Office Action

Claims 90, 92-115, and 144-147 are rejected under 35 U.S.C. § 103(a) and claims 90-99 are rejected on the ground of nonstatutory obviousness-type double patenting.

II. Prior Art Rejections

Claims 90 and 92-99 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Saito (JP 05-148615) in view of Imai (JP 11-229159), claims 100, 102-108, 110-115, and 144-147 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Saito, claims 101 and 109 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Saito in view of Imai further in view of Koizumi et al (EP 1035231, hereafter referred to as Koizumi), and claims 144-147 are alternately rejected under 35 U.S.C. § 103(a) as being unpatentable over Saito in view of Liu (Powder Technology 126 (2002) 283-296). Applicant respectfully traverses these grounds of rejections at least in view of the following exemplary comments.

Independent claims 90, 95, 100, 108 have been amended and now recite: "the powder of any of the metal and the metallic compound is any one of Co alloy, Ni alloy, and Fe alloy." Applicant respectfully submits that the prior art of record do not disclose or suggest at least these unique features of the independent claims. Accordingly, Applicant respectfully submits that claims 90, 95, 100, and 108 should now be allowed. Claims 92, 93, 96-98, 101-103, 105-107, 109-111, 113-115, and 144-147 are patentable at least by virtue of their dependency.

III. Double Patenting Rejections

A. Claims 90-99 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 7,641,945 (hereafter referred to as '945).

B. Claims 100, 102-108, 110-115, and 144-147 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent 7,641,945 in view of Saito.

C. Claims 101 and 109 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent 7,641,945 in view of Koizumi.

D. Claims 100, 102-106, 108, 110-114, and 144-147 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 76-78, 105 and 106 of copending Application No. 10/559,427 (hereinafter referred to as '427) in view of Saito.

E. Claims 90 and 92-99 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 76-78, 105 and 106 of copending Application No. 10/559,427 in view of Saito further in view of Imai.

F. Claims 101 and 109 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 76-78, 105 and 106 of copending Application No. 10/559427 in view of Saito and Koizumi.

G. Claims 100, 102-106, 108, 110-114, and 144-147 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 46, 51 and 52 of U.S. Patent No. 7,537,808 (which was previously used in the provisional double patenting rejection before it issued as Application 10/516,506) in view of Saito.

H. Claims 90 and 92-99 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 46, 51 and 52 of U.S. Patent No. 7,537,808 in view of Saito and Imai.

I. Claims 101 and 109 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 46, 51 and 52 of U.S. Patent No. 7,537,808 in view of Saito in view of Koizumi.

Applicant respectfully submits that as argued above with respect to the prior art rejections, Saito, Imai, and Koizumi do not describe the above-quoted unique features of at least amended claims 90, 95, 100, and 108. As such, these references do not cure the deficiencies of the '945 patent, the '427 application, and the '808 patent. Accordingly, Applicant respectfully requests the Examiner to withdraw these double patenting rejections.

IV. Statement of Substance of Interview

Applicant thanks the Examiner for the courteous telephonic interview on December 16, 2010. An Examiner's Interview Summary Record (PTO-413) was mailed to the Applicant. The PTO-413 requires Applicant to file a Statement of Substance of the Interview. The Statement of Substance of the Interview is as follows:

During the interview, Examiner Horning and Supervisory Examiner Meeks encouraged the Applicant to better define the particle sizes and volume % of the mixture to distinguish these from the prior art and present evidence commensurate with the scope of the claims evidencing unexpected results.

It is respectfully submitted that the instant STATEMENT OF SUBSTANCE OF INTERVIEW complies with the requirements of 37 C.F.R. §§1.2 and 1.133 and MPEP §713.04.

V. Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly invited to contact the undersigned attorney at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

/ Dvorso /

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